

[Docket No. C-2870]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Uncle Ben's, Inc., et al

AGENCY: Federal Trade Commission.

ACTION: Order to cease and desist.

SUMMARY: Consent order requiring a Houston, Texas, producer and distributor of food products, and its New York City advertising agency, among other things to cease disseminating advertisements which depict or portray children coming close to foods in the process of being cooked, or attempting to cook foods themselves, without close adult supervision, or any other advertisements which may have the tendency to influence children to engage in behavior inconsistent with recognized safety practices.

DATES: Complaint and order issued February 23, 1977.¹

FOR FURTHER INFORMATION CONTACT:

Richard B. Herzog, Assistant Director for National Advertising, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, D.C. 20580. 202 724-1499.

SUPPLEMENTARY INFORMATION: In the Matter of Uncle Ben's, Inc., a corporation, and Rosenfeld, Sirowitz & Lawson, Inc., a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows:

Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly. Subpart—Disseminating Advertisements, etc.: § 13.1043 Disseminating advertisements, etc.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interprets or applies sec. 5, 38 Stat. 719, as amended; (15 U.S.C. 45).)

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

ORDER

For the purposes of this order, the following definitions apply:

1. The term "commerce" means commerce as defined by the Federal Trade Commission Act, as amended.

2. The term "food" means any article used for food or drink for man or other animals.

3. The term "cooking" shall mean a process of food preparation which includes the application of heat.

4. The term "child" shall mean a person who appears to be or in fact is under the age of 12.

I.

It is ordered, That respondents Uncle Ben's, Inc., a corporation, and Rosenfeld, Sirowitz & Lawson, Inc., a corporation

(hereinafter referred to as respondents), their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale or distribution in or affecting commerce of any product, forthwith cease and desist from, directly or indirectly:

A. Representing, through depictions, descriptions, or otherwise, children closely examining, or closely approaching foods or containers of foods which are in the process of being cooked.

B. Representing, through depictions, descriptions, or otherwise, children participating in the process of cooking without close supervision of an adult.

C. Representing, through depictions, descriptions, or otherwise, children initiating participation with persons who are in the process of cooking by touching a utensil, glove, pot or other object that is being used in the process of cooking without first having received permission from an adult.

D. Representing, through depictions, descriptions, or otherwise, children without close adult supervision in a kitchen or other area where foods are in the process of being cooked: *Provided*, That this subparagraph D shall not prohibit depiction of children eating foods or children engaging in other behavior not likely to affect the cooking process in the presence of adults who are attending to the process of cooking foods.

E. Representing, through depictions, descriptions, or otherwise, children engaging in activity in a kitchen or in an area where foods are in the process of being cooked where it is reasonably foreseeable, through reasonable inquiry, that such representation has the tendency or capacity to influence children to engage in behavior which creates an unreasonable risk of harm to themselves or to others.

II

It is further ordered, That respondents shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-10978 Filed 4-13-77;8:45 am]

PART 433—PRESERVATION OF CONSUMERS' CLAIMS AND DEFENSES

Exemption From Trade Regulation Rule for Two-Party Open End Consumer Credit Contracts; Invitation to Comment

AGENCY: Federal Trade Commission.

ACTION: Exemption from Trade Regulation Rule; Invitation to comment on petition for exemption.

SUMMARY: The Commission is exempting contracts for the extension of two-party open end consumer credit from the requirements of the Trade Regulation Rule on Preservation of Consumers' Claims and Defenses, if the contracts are executed before August 1, 1977, and do not involve the use of negotiable instruments or waivers of claims and defenses. The primary purpose of the exemption is to avoid costs involved in modifying outstanding two-party open end credit contracts. As of August 1, 1977, the Rule will apply to all consumer credit contracts taken or received by sellers. In addition, the Commission has received two petitions for an exemption from the Trade Regulation Rule broader than the one the Commission is issuing. The Commission is soliciting comments on the issues raised by these petitions. The Commission is also soliciting comments on the more limited exemption that has been issued.

DATES: Exemption effective immediately. Comments must be received on or before May 16, 1977.

ADDRESSES: Comments should be addressed to: Assistant Director for Compliance, Federal Trade Commission, Washington, D.C. 20580, and labeled "HDIC Exemption Comment."

FOR FURTHER INFORMATION CONTACT:

Rachel Shea, Attorney, Division of Compliance, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580. 202-254-8302.

SUPPLEMENTARY INFORMATION: The Commission is exempting contracts for the extension of two-party open end consumer credit from the requirements of Section 433.2(a) of the Trade Regulation Rule on Preservation of Consumers' Claims and Defenses, if the contracts are executed before August 1, 1977, and do not involve the use of negotiable instruments or waivers of claims and defenses. Section 433.2(a) requires the incorporation of a Notice preserving certain consumer rights in all credit contracts used by sellers. Contracts covered by the exemption will not be required to incorporate the Notice. The primary purpose of the exemption is to avoid costs involved in modifying outstanding two-party open end credit contracts. As of August 1, 1977, the Rule will apply to all consumer credit contracts taken or received by sellers.

¹ Copies of the Complaint and Decision and Order filed with original document.

The Commission also determined that it is contrary to the public interest for it to publish notice of proposed rulemaking and for it to receive comment on granting the exemption in accordance with 5 U.S.C. Sec. 553 (b) and (d). Such procedures would result in continued uncertainty about compliance with the Rule for extensions of credit made pursuant to existing two-party open-end consumer credit contracts. Commissioner Dole dissented, stating:

I believe the exemption the Commission today grants for two-party, open-end credit contracts, including two-party credit card arrangements, executed before August 1, 1977, should have been placed on the record for 60 days of public comment. I dissent from the Commission's determination that it is contrary to the public interest to grant the public an opportunity to comment on an action which excludes from the coverage of our Trade Regulation Rule on Preservation of Consumer Claims and Defenses a class of contracts which could involve millions of consumers.

In addition, the Commission has received two petitions for an exemption from the Trade Regulation Rule broader than the one the Commission is issuing. The Commission is soliciting comments on the issues raised by these petitions. The Commission is also soliciting comments on the more limited exemption that has been issued.

STATEMENT OF REASONS FOR EXEMPTION INTRODUCTION

The Federal Trade Commission has received from the National Retail Merchants Association (NRMA) and the American Retail Federation (ARF) a petition for exemption from § 433.2(a) of the Commission's Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses, 16 CFR 433.2(a). An additional petition has been received from the Fingerhut Corporation urging the Commission to accept the NRMA/ARF petition.¹ The petition proposes to exempt from the TRR consumer credit contracts used by sellers provided the contracts do not involve the use of negotiable instruments or waivers of claims or defenses, and further provided that sellers wishing to use the exemption agree to adopt certain specified protective measures, including registration with the Federal Trade Commission. A copy of the exemption proposed by NRMA and ARF is appended to this Statement.

The Commission has concluded that the public interest would be served by the issuance of a more limited exemption, effective immediately.² This more limited

exemption, applies only to open end credit contracts, such as charge account master agreements, executed before August 1, 1977. It does not apply to agreements executed after this date. After July 31, 1977, the Rule will apply to all consumer credit contracts executed by sellers. This includes contracts for the extension of credit by means of seller credit cards.³

In addition, the Commission is soliciting comments from the public on the issues raised by the NRMA/ARF petition and the desirability of a broader exemption from 16 CFR 433.2(a).

REASONS FOR ISSUANCE OF EXEMPTION FOR OPEN-END CREDIT CONTRACTS ENTERED INTO BEFORE AUGUST 1, 1977

Section 433.2(a) of the Trade Regulation Rule on Preservation of Consumers' Claims and Defenses requires that a short Notice be included in all consumer credit contracts used by sellers. The Commission's decision to require the Notice in all such contracts was based on the fact that virtually all consumer credit is extended pursuant to form contracts. The costs of including a short Notice in contract forms before they are used appear to be minimal. In most cases the Notice can be included in forms when they are printed. Where it will be costly to replace existing inventories of forms, the Notice can be added by means of a stamp, a stapled addendum, or similar mechanism.

The above projections of compliance costs apply primarily to contracts which have not yet been executed. However, different considerations may be present in the case of open end charge accounts where credit is extended from time to time pursuant to a single master agreement. Under such plans, credit extensions subject to 16 CFR 433.2(a) may be made pursuant to a consumer credit contract which was executed before 16 CFR 433.2(a) took effect. Inserting the FTC Notice in such contracts in a manner sufficient to make it legally enforceable may require finding, removing from files, and adding language to large numbers of existing master agreements, and notifying the customers involved, a process which could be more costly than printing the Notice in standard forms to be used in the future.

These cost considerations suggest that it would be desirable to exempt from § 433.2(a) of the Rule seller open end credit contracts executed before the Rule went into effect on May 14, 1976, pro-

stantive rule shall be made not less than 30 days before its effective date, except—(1) a substantive rule which grants or recognizes an exemption or relieves a restriction; . . .

² The discussion of seller open end credit on page 10 of the Federal Trade Commission, Bureau of Consumer Protection, Staff Guidelines on Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses (May 4, 1976) is somewhat ambiguous. The Commission would like to make clear that the Rule applies to all seller open end consumer credit not covered by the Commission's exemption.

vided that such contracts do not involve the use of negotiable instruments or waivers of claims or defenses.

The Commission also understands that there have been misunderstandings about the applicability of 16 CFR 433.2(a) to seller open end credit generally.

The existence of these misunderstandings suggests the desirability of extending an exemption for seller open end credit through to August 1, 1977, to give all sellers an opportunity to come into compliance with the Rule.

Finally, it should be noted that the definition of "open end credit" in the exemption is taken directly from § 226.2(x) of Federal Reserve Board Regulation Z as amended October 28, 1975, except that the definition in the proposed exemption does not contain the language of Regulation Z § 226.2(x)(3) limiting the definition to plans in which a finance charge is computed.

DISCUSSION OF NRMA/ARF PETITION

Both the exemption issued on this date by the Commission and the exemption proposed by NRMA/ARF apply only to contracts that do not involve the use of negotiable instruments or waivers of claims or defenses. However, the Commission exemption applies only to open end consumer credit contracts executed before August 1, 1977. By contrast, the NRMA/ARF proposed exemption is permanently available; and applies to all types of consumer credit contracts used by sellers, including ordinary installment sales contracts.

The NRMA/ARF petition contains a number of arguments for extending an exemption to contracts not covered by the Commission exemption. NRMA and ARF argue that because their proposed exemption is confined to contracts that are not negotiable and do not contain waiver provisions, and because petitioners would agree to elaborate protective measures, including formal registration with the FTC, consumers would not suffer a loss of rights.

In addition, petitioners argue that the physical placement of the required Notice in other than open end credit contracts involves significant costs. Petitioners' cost arguments include the following, which are quoted from their petition:

(1) The Rule would require sellers to revise their contracts to include a ten point bold type notice thereon. The notice, of technical nature, would take up a substantial amount of space on the seller's contract forms. Depending upon the particular seller and the document involved, the inclusion of such notice might require revision of the size of the document. Because contract documents are of a particular size, designed so as to fit particular filing cabinets, mechanical and electronic equipment, etc., any change in the size of a contract document could require the seller to incur a significant capital expense for the replacement or alteration of the foregoing.⁴

(2) For those sellers who will be able to include the prescribed notice on their contract forms without changing the size thereof, there will nevertheless be a significant expense to revise such forms. This ex-

⁴ NRMA/ARF Petition at 5.

¹ A copy of the two petitions can be obtained from Public Reference Branch, Room 130, Federal Trade Commission, Washington, D.C. 20580. Please label a request for the petitions, "HIDC Exemption Petition Request."

² Section 18(g)(2) of the Federal Trade Commission Act, 45 U.S.C. § 18(g)(2), provides that Section 553 of Title 5, United States Code, shall apply to Commission actions to exempt persons from Commission rules. 5 U.S.C. § 553(d) provides that, "The required publication or service of a sub-

pense is particularly significant in the light of the fact that most sellers subject to the Rule have just completed a comprehensive form revision program which was undertaken to comply with requirements under the Fair Credit Billing Act effective April 30, 1976 and under the Equal Credit Opportunity Act effective June 30, 1976. This having been accomplished, sellers have disposed of their prior stock of credit forms and ordered and received substantial stock of new forms.²

(3) While it is impossible to estimate with precision the industry-wide cost of form revision and system changes which would be necessary for sellers to comply with the Rule, clearly, given the many thousands of sellers and many millions of consumer credit sales transactions, the industry-wide cost would easily amount to many millions of dollars. The cost to individual companies is substantial and can be verified.³

(4) In addition to the cost burden imposed on sellers, placing the notice on the form would disturb the seller's relationship with his customer—by creating the unwarranted implication that the seller may transfer an obligation and impair a customer's defenses when in fact that is not the seller's practice or intent. Retailers' relationships with their customers are their most highly valued asset, and although intangible, are indeed priceless. Many customers prefer to deal only with the retailer of goods or services—and not with a third party financier. There is no reason to require the retailer to suggest to his customers that the customer may be forced to deal with a third party when such is not the case.⁴

(The NRMA/ARF petition also includes cost arguments relating specifically to open end credit master agreements in existence at the time the Rule went into effect. These arguments are similar to the reasons given by the Commission for issuing its exemption.)

The Commission notes that its staff is of the view that the arguments and evidence in the NRMA/ARF petition do not warrant an exemption broader than the one the Commission has issued. This view is based on the following considerations:

1. There are advantages to requiring the Notice in all consumer credit contracts used by sellers. Such a requirement makes the Rule easier to enforce and will therefore reduce the likelihood of consumers losing rights as a result of violations of the Rule. The requirement also has other advantages for consumers. They can check their credit contracts at time of sale and know that something is wrong if the Notice is absent. If disputes with creditors arise, consumers and their lawyers can assert rights directly on the basis of language in the contract, without the need to determine the status of the particular contract as a matter of state commercial paper law. Finally, requiring the Notice in all consumer credit contracts used by sellers frees sellers from the need to determine whether the Notice is required in particular contracts, thereby reducing consultation with lawyers and other costs of decision making.

2. Ambiguities in the laws of certain states make it possible that some consumers may have rights cut off by assign-

ment even though their contracts are not negotiable and do not contain explicit waivers of defenses.

3. It is not clear that the inclusion of the Notice in contracts will require purchase of new filing cabinets or other major capital expenses in a significant number of cases. Large numbers of businesses have been able to incorporate the Notice in contracts without changing the size or shape of documents. The Rule permits inclusion of the Notice on the back of contracts or as an additional page. One can imagine other mitigating measures such as folding pages, etc.

4. The cost of the Rule in making obsolete existing inventories of forms appears to be very low in the long run since inventories will have to be replaced in any case. Short run costs can be mitigated by the use of stamps, stapled addenda, etc. It also appears likely that most short run costs of revising forms have already been incurred, since the Rule was announced in November of 1975 and went into effect in May of 1976.

5. It is not clear that the language of the Notice will convey to a significant number of consumers the impression that a business ordinarily assigns its credit contracts. In addition, businesses can explain to customers that the Notice is required by law in all contracts, whether or not they are assigned.

6. The protective measures set out in petitioners' proposed exemption appear expensive, cumbersome, and possibly unworkable.

7. The legal effect of the protective measures set out in the petitioners' proposed exemption, e.g., "acknowledge (ment) to the Commission . . . that the notice . . . is an implied term of the consumer contract," is uncertain.

It should be emphasized that the considerations listed above reflect the staff's initial judgment. The Commission is soliciting public comment on the NRMA/ARF petition and is interested in receiving any information relating to the validity of the listed considerations.

APPENDIX—EXEMPTION OF PERSONS, PARTNERSHIPS AND CORPORATIONS FROM REQUIREMENTS OF 16 CFR 433.2 (a) PROPOSED BY NATIONAL RETAIL MERCHANTS ASSOCIATION AND AMERICAN RETAIL FEDERATION

It shall not be a violation of the Federal Trade Commission's Trade Regulation Rule entitled "Preservation of Consumers' Claims and Defenses," 16 CFR 433, for a seller of goods or services, directly or indirectly, to take or receive a consumer credit contract which fails to contain the provision required by 16 CFR 433.2(a) where:

(1) The seller takes or receives a consumer credit contract which: (a) is not a negotiable instrument, and (b) does not contain a provision limiting or waiving the consumer's right to assert against any holder of the consumer credit contract all claims and defenses which the consumer could assert against the seller of goods or services obtained

pursuant to the consumer credit contract; and

(2) The seller acknowledges to the Commission, in a form which may be prescribed by the Commission, that the notice set forth in 16 CFR 433.2(a) is an implied term of the consumer credit contract; and

(3) The seller does not voluntarily transfer, sell, pledge or assign the consumer credit contract unless as a condition of said transfer, sale, pledge or assignment the transferee, buyer, pledgee or assignee agrees in writing that said consumer credit contract has as a term thereof the notice set forth in 16 CFR 433.2(a); and

(4) In the event of a voluntary transfer, sale, pledge or assignment of the consumer credit contract pursuant to which the consumer will be directed to make payment to a person other than the seller, the seller (or a transferee, buyer, pledgee or assignee on behalf of the seller) will provide the consumer with notice of the provision set forth in 16 CFR 433.2(a) not later than the time when the consumer is notified to make payment to a person other than the seller; and

(5) The seller executes and delivers to the Commission a statement, in a form and manner which may be prescribed by the Commission, that: (a) the seller intends to avail itself of this exemption from 16 CFR 433.2(a); and (b) the seller will fulfill in a timely manner all of the requirements set forth in paragraphs 1 through 4 of this exemption from 16 CFR 433.2(a), to the extent that the seller takes or receives a consumer credit contract which does not contain the notice which would otherwise be required by 16 CFR 433.2(a).

INVITATION TO COMMENT ON EXEMPTION AND ON PETITION FOR EXEMPTION FROM 16 CFR 433.2 (a)

All interested parties are hereby notified that they may submit to the Assistant Director for Compliance, Federal Trade Commission, Washington, D.C. 20580, written data, views, or arguments on any issues of fact, law or policy, which may have some bearing on:

(1) The exemption from 16 CFR 433.2(a) issued by the Commission on this date;

(2) The exemption from 16 CFR 433.2(a) proposed in the NRMA/ARF petition;

(3) Any similar possible exemption from 16 CFR 433.2(a) which would not lead to a loss of consumer rights as compared to the original Rule but which might allow the objectives of the Rule to be achieved in a more efficient manner.

The Commission requests that persons commenting on any of these three subjects address the following issues: (1) What specific costs occasioned by compliance with 16 CFR 433.2(a) would be lessened by the exemption or any proposed exemption? (2) Will consumers receive the same protection against cut offs of claims and defenses under the terms of the exemption, or any proposed exemption, as under the Rule? (3) Is the language of the exemption, or any pro-

²Id.

³Id. at 6.

⁴Id. at 9.

⁵See the second condition of the NRMA/ARF proposed exemption.

posed exemption, adequate? In what ways could the exemption be improved? (4) Are there any modifications that should be made in the exemption or any proposed exemption? What effect would these modifications have on the answers to questions (1) and (2)? (5) How will the exemption, or any proposed exemption, affect the ability of the Commission to effectively enforce the Rule?

Persons commenting on the exemption issued by the Commission are, in addition, specifically requested to address the following issues: (1) Is the definition of "open end credit" in the exemption appropriate to the scope of the problems addressed by the exemption? If not, what modifications should be made? What would be the effect of these modifications? and (2) Should the exemption be revoked and, if so, why?

Persons commenting on the NRMA/ARF proposed exemption are requested to discuss: (1) The arguments for the proposed exemption made in the NRMA/ARF petition; and (2) The considerations listed by the Commission in its discussion of the petition in the Statement of Reasons that accompanies the exemption issued by the Commission.

In all comments, the Commission particularly welcomes empirical evidence.

Written comments will be accepted until May 16, 1977. To assure prompt consideration of a comment, it should be identified as an "HIDC Exemption Comment" and, when feasible and not burdensome, submitted in five copies.

EXEMPTION

Accordingly, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. section 41, et seq., the provisions of Part I, Subparts B and C of the Commission's Procedures and Rules of Practice, 16 CFR section 1.7, et seq., and section 553 of Subchapter II, Chapter 5, Title 5 of the U.S. Code (Administrative Procedures), the Commission hereby issues the following exemption from 16 CFR 433.2(a), which will be added to 16 CFR Part 433 as a new § 433.3.

§ 433.3 Exemption of sellers taking or receiving open end consumer credit contracts before August 1, 1977 from requirements of § 433.2(a).

(a) Any seller who has taken or received an open end consumer credit contract before August 1, 1977, shall be exempt from the requirements of 16 CFR Part 433 with respect to such contract provided the contract does not cut off consumers' claims and defenses.

(b) *Definitions.* The following definitions apply to this exemption:

(1) All pertinent definitions contained in 16 CFR 433.1.

(2) Open end consumer credit contract: a consumer credit contract pursuant to which "open end credit" is extended.

(3) "Open end credit": consumer credit extended on an account pursuant to a plan under which (i) the creditor may permit the customer to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card, check, or other device, as the plan may provide; (ii) the customer has the privilege of paying the balance in full or in installments. The term does not include negotiated advances under an open-end real estate mortgage or a letter of credit.

(4) Contract which does not cut off consumers' claims and defenses: a consumer credit contract which does not constitute or contain a negotiable instrument, or contain any waiver, limitation, term, or condition which has the effect of limiting a consumer's right to assert against any holder of the contract all legally sufficient claims and defenses which the consumer could assert against the seller of goods or services purchased pursuant to the contract.

By direction of the Commission.

Issued: April 14, 1977.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-11084 Filed 4-13-77; 8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 77-72]

PART 127—SECURITY ZONES

Security Zone—Boston Harbor,
Massachusetts

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a Security Zone around the land area of the Coast Guard Support Center, Boston, Massachusetts and the waters surrounding Piers 1, 2 and 3 of the Coast Guard Base and Support Center. This security zone is established to maintain security in the vicinity of the seized Russian fishing vessel TARAS SHEVCHENKO while in the custody of the United States.

DATES: This amendment is effective on April 11, 1977 and is terminated on June 11, 1977.

FOR FURTHER INFORMATION CONTACT:

Captain George K. Greiner, Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-1477).

SUPPLEMENTARY INFORMATION: The principal persons involved in the drafting of this rulemaking are: LCDR H. E. Snow, Project Manager and Mr. S. D. Jackson, Project Attorney.

This amendment is issued without publication of a notice of proposed rulemaking and this amendment is effective in less than 30 days from the date of publication, because this security zone involves a foreign affairs function of the United States.

In consideration of the foregoing, Part 127 of Title 33 of the Code of Federal Regulations is amended by adding § 127.107, to read as follows:

§ 127.107 Boston Harbor, Massachusetts.

The area within the following boundary is a security zone: a line beginning at position 42°22'07.5" N. latitude, 71°03'13" W. longitude; thence in a northeasterly direction to a Coast Guard marker buoy at position 42°22'12.4" N. latitude, 71°03'09" W. longitude; thence in an easterly direction to a Coast Guard marker buoy at position 42°22'11.2" N. latitude, 71°03'02.9" W. longitude; thence in a southeasterly direction to a Coast Guard marker buoy at position 42°22'05.3" N. latitude, 71°02'59.1" W. longitude; thence in a southwesterly direction to the northern edge of Pier 4 at position 42°22'04" latitude, 71°03'05" W. longitude; extending along the northern face of Pier 4 in a southwesterly direction to position 42°22'01.5" N. latitude, 71°03'05" W. longitude; thence along the seawall in a northwesterly direction to the southernmost boundary of Coast Guard Support Center Boston at position 42°22'03" N. latitude, 71°03'06" W. longitude; thence along the shoreline property line of Coast Guard Support Center Boston to the point of beginning. No vessel or person may enter, cross, or navigate in the Security Zone without the consent of the Captain of the Port.

(40 Stat. 220, as amended (Sec. 1, 63 Stat. 503) sec. 6(b), 89 Stat. 937; 50 U.S.C. 191 (14 U.S.C. 91), 49 U.S.C. 1655(b); E.O. 10173, E.O. 10277, E.O. 10352, E.O. 11249; 3 CFR, 1949-1953 Comp. 349, 33 CFR Part 6, 49 CFR 1.46(b).)

Dated: April 12, 1977.

O. W. SILER,
Admiral, United States
Coast Guard Commandant.

[FR Doc.77-11068 Filed 4-13-77; 8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 76-PC-7]

TRANSITION AREA

Proposed Alteration; Extension of Comment Period

Correction

In FR Doc. 77-7864, appearing on page 14885 in the issue of Thursday, March 17, 1977, in the first column, the airspace docket number should read as set forth in the heading of this correction.

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 21191; RM-2618]

TELEVISION BROADCAST STATIONS IN FAYETTEVILLE, ARKANSAS, ET AL.

Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: This document proposes to substitute TV Channel 29 for 36 at Fayetteville, Arkansas, at the request of transferee, in order to utilize newly acquired broadcast equipment and facilitate restoration of UHF television service to the area. This change would also require substitution for three unoccupied UHF channels: Channel 36 for 29 at Little Rock, Arkansas; 31 for 14 at Harrison, Arkansas; and 47 for 29 at Tulsa, Oklahoma.

COMMENT DATES: Comments must be received on or before May 19, 1977, and reply comments on or before June 8, 1977.

ADDRESSES: James J. Gross, Legal Branch, Policy and Rules Division, Broadcast Bureau, Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

James J. Gross (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: April 4, 1977.

Released: April 11, 1977.

1. The Commission has before it several pleadings pertaining to a petition for rule making in this proceeding filed by Noark Investment Company ("Noark"), which

seeks the amendment of § 73.606(b) of the Commission's rules, the Television Table of Assignments, by substituting UHF Channel 29 for Channel 36 at Fayetteville, Arkansas. This change would require assignment substitutions for three vacant UHF channels in order to meet the minimum separation requirements contained in the FCC rules. The required substitutions are Channel *36 for *29 at Little Rock, Arkansas; Channel *31 for *14 at Harrison, Arkansas; and Channel 47 for 29 at Tulsa, Oklahoma. All are vacant, and no applications are pending for any of these channels.

2. Fayetteville (1970 pop. 30,729) is located in Washington County (1970 pop. 77,370) in northwestern Arkansas. Noark states that Fayetteville is an educational and cultural center and is the home of the University of Arkansas. Present local television broadcasting consists of KAPT, Channel 13, an educational non-commercial station. Commercial UHF Station KGTO-TV (call letters were changed to KTVP on January 17, 1977), licensed to Noark, operated on Channel 36 in Fayetteville but has been off the air since December of 1973, because of continuing economic difficulties.

3. The proposed channel substitution is requested because KTVP's broadcast equipment was lost, stolen or damaged during the time preceding the transfer of control of Noark while the station was off the air. Noark has obtained replacement equipment designed for a Channel 29 frequency. Noark states that operation on Channel 29 rather than Channel 36 would permit restoration of service quickly and save approximately \$100,000 in additional capital available to cover expected operating losses and future capital requirements.

4. A response in opposition to the petition was filed by Mid-America Broadcasting, Inc., licensee of KTVJ-TV, Joplin, Missouri, stating that it intended to apply for Channel 29 if assigned to Fayetteville and that it opposed any interim operation by Noark on Channel 29. Noark withdrew its petition for rulemaking on March 3, 1976, and the Commission's file was closed. However, Mid-America subsequently decided not to proceed and withdrew its objection to the substitution on May 6, 1976, whereupon Noark filed a request to reopen the rulemaking as it was originally proposed. The Commission indicated that it had reopened the proceeding by Public Notice (FCC Memo No. 65951) on June 8, 1976, allowing a new response period until August 23, 1976. On June 11, 1976, Noark filed a petition for issuance of a show cause order to modify the license

of KTVP (then KGTO-TV) at Fayetteville from Channel 36 to Channel 29. Noark also filed a request for special temporary authority on July 28, 1976, to operate the station on Channel 29 while the rulemaking was pending. However, the Commission rejected this request. Finally, on December 7, 1976, Noark filed a request for prompt action on its petition for rulemaking.

5. On April 30, 1975, the Commission approved the transfer of control involving 100% of Noark's corporate stock to George T. Hernreich, licensee of UHF Station KFPW-TV, at Fort Smith, Arkansas, 53 F.C.C. 2d 923 (1975). The petition states that Hernreich plans to operate KTVP on Channel 29 as a satellite of KFPW-TV, which is the only operating UHF station in Arkansas at the moment.¹ Noark states that it has suffered financial losses since it began operation in 1971. Noark hopes that the two stations can profit by operating together as parent and satellite and provide UHF service to a new area at Fayetteville.

6. The KGTO-TV transfer of control (53 F.C.C. 2d 923 (1975)) was conditioned on the outcome of hearings designated on July 29, 1971, in Dockets 19291-92, which involved Hernreich's application for a license to cover a construction permit for KFPW-TV, Fort Smith, Arkansas (Docket No. 19291), and for renewal of license of KAIT-TV, Jonesboro, Arkansas (Docket No. 19292), 30 F.C.C. 2d 903 (1971). The Commission on July 17, 1974, denied renewal of the license for KAIT-TV, finding that Hernreich had conducted dishonest transactions to advance the private interests of his station, but granted the application for a license to cover the construction permit for KFPW-TV because of "the absence of any evidence of misconduct committed at KFPW-TV and the unlikelihood that the misconduct involving KAIT-TV will be repeated in his operation of Station KFPW-TV." 47 F.C.C. 2d 1090, 1095 (1974). Hernreich has petitioned the Commission for reconsideration of the KAIT-TV renewal denial, and the matter is still pending before the Commission, but on July 17, 1975, the Commission severed the KFPW-TV application from the KAIT-TV inquiry and the KFPW-TV grant became final. More recently, the Commission finalized the grant of Hernreich's application for a new FM station at Fort Smith, Arkansas, which was also conditioned on the out-

¹ A construction permit for a second UHF station, KLMN, Channel 24, in Fort Smith was granted by the Commission in March of 1975, but the station is not yet operational (File No. BPOT-4763).

come of Docket Nos. 19291-92. The Review Board made a finding that the Commission intended its severance and favorable resolution of the KFPW-TV proceeding to be dispositive of Hernreich's character qualifications with regard to the FM grant. 57 F.C.C. 2d 1034, 1035 (1976). The Review Board decision indicates that "the Commission's recent approval of (the KGTO-TV) assignment agreement . . . removes any possible doubt which may otherwise have remained as to the Commission's views concerning Hernreich's qualifications to acquire an additional broadcast facility." 57 F.C.C. 2d at 1035-36. Normally character questions are not pertinent to television channel assignment cases, but in this case if Noark were not eligible to utilize the assignment, there would be little use in proposing an assignment, since no one else has expressed an interest in operating a station at Fayetteville.

7. Having considered the record in this proceeding, we find that the public interest would be served by proposing the requested amendments to the Television Table of Assignments in order to expand UHF service to Fayetteville, Arkansas, and the surrounding area at the earliest possible time. Since petitioner is requesting a modification of its license, thereby waiving its rights under Section 316 of the Communications Act, it is unnecessary to issue an Order To Show Cause in the event the Commission decides to grant the proposed substitution.

8. Accordingly, the Commission proposes to amend the Television Table of Assignments, § 73.606(b) of the Commission's rules and regulations, with regard to the cities listed below, as follows:

City	Channel No.	
	Present	Proposed
Fayetteville, Ark.	*13-, 36	*13-, 39+
Little Rock, Ark.	*2, 4, 7-, 11+, 16-, 29-	*2, 4, 7-, 11+, 16-, 30
Harrison, Ark.	*14	*11+
Tulsa, Okla.	2+, 6, 8-, 11-, 23, 29, 35-, 41+	2+, 6, 8-, 11-, 23, 35-, 41+47,

9. The Commission's authority to institute rule making proceedings; showings required; cut-off procedures; and filing requirements are contained in the attached Appendix and are incorporated herein.

10. Interested parties may file comments on or before May 19, 1977, and reply comments on or before June 8, 1977.

FEDERAL COMMUNICATIONS
COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d) (1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b) (6) of the Commission's rules, it is proposed to

amend the Television Table of Assignments, § 73.606(b) of the Commission's rules and regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished to the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 77-10963 Filed 4-13-77; 8:45 am]

[47 CFR Part 76]

[Docket No. 20561; FCC 77-215]

CABLE TELEVISION

Definition and Creation of Classes of Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Federal Communications Commission (FCC) proposes to amend its regulation to reduce the number of rules covering cable television systems with 500 to 1000 television subscribers. The FCC proposes to take this action because the regulatory burden on these systems appears excessive in light of the impact they have upon local broadcasting services.

DATES: Comments due June 6, 1977, and reply comments due July 6, 1977.

ADDRESS: Send comments to the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

James A. Hudgens, Policy Review and Development Division, Cable Television Bureau, Federal Communications Commission, Washington, D.C. 20554, 202-632-6468.

SUPPLEMENTARY INFORMATION:

Adopted: March 9, 1977.

Released: April 6, 1977.

1. In a First Report and Order adopted today in this proceeding, we have amended our definition of a cable television system and created a class of small systems, having between 50 and 499 subscribers, to which a reduced regulatory program shall apply. While systems of this size must continue to observe the mandatory signal carriage rules, meet technical standards, and file abbreviated annual operating reports and financial reports, they need no longer comply with distant signal carriage limitations, or make system performance tests, nor need they comply with the rules on franchising and certification or maintain records for local inspection.

2. As explained in that document, we adopted this abbreviated regulatory program because our research indicated that, largely because of these systems' small size, exempting them from compliance with certain of our rules would not give rise to the problems those rules are intended to prevent.

3. Our analysis of available evidence further suggests that the same conclusion might also be drawn with respect to somewhat larger systems, having between 500 and 999 subscribers, and it may therefore be appropriate to apply the same reduced regulatory program to them as well. We are aware, of course, that these intermediate-sized systems are larger, in terms of both revenue